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International Covenant on Civil and Political Rights

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Human Rights Committee
Ninety-fifth session

Summary record of the 2602nd meeting*
Held at Headquarters, New York, on Wednesday, 18 March 2009, at 10 a.m.

Chairperson: Mr. Iwasawa

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Third periodic report of Rwanda

* No summary records were issued for the 2599th to 2601st meetings.

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09-27167 (E)

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The meeting was called to order at 10.20 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Third periodic report of Rwanda
(CCPR/C/RWA/3; CCPR/C/RWA/Q/3/Rev.1 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Rwanda took places at the Committee table.*

2. **Mr. Nsengimana** (Rwanda) said that his Government's third periodic report (CCPR/C/RWA/3) was in fact a consolidated report covering the years 1992 to the present. Following the 1994 genocide, which by definition had been a radical denial of human rights, Rwanda was determined to establish the rule of law through measures aimed at promoting and protecting human rights, especially civil and political rights.

3. Since the submission of Rwanda's second periodic report, the country had made great strides, legally and institutionally, in ensuring the civil and political rights of its people, including through the adoption in 2003 of a new constitution, which provided for the direct application of international instruments in Rwanda. Because the Committee's concluding observations on Rwanda's second periodic report had not reflected those developments, they had not been taken into account during the drafting of the current report.

4. The Rwandan Patriotic Front, which had ended the genocide in 1994, had also played an active role in establishing the Government of National Unity and, later, the Transitional National Assembly. The political transition had come to an end in 2003 with the adoption of the new Constitution and the advent of democratically elected institutions. The fundamental principles of the new Constitution included the rejection of dictatorship; the creation of a State governed by the rule of law and respect for basic human rights; the suppression of genocide and related ideology; equality among Rwandans and between men and women; and the constant quest for dialogue and consensus.

5. Following the genocide, the Government had created institutions capable of strengthening the rule of law, specifically, democratic, independent institutions representing the three branches of power, and national commissions and specialized State agencies to deal with particular issues. Despite the challenges involved in overcoming the aftermath of the genocide and establishing the rule of law, remarkable progress had been achieved. Rwanda was committed to working towards even more effective compliance with the Covenant.

6. **The Chairperson** invited the delegation to address questions 1-14 on the list of issues (CCPR/C/RWA/Q/3/Rev.1).

7. **Mr. Rusanganwa** (Rwanda), referring to question 1 on the list of issues, said that the right to invoke international treaties before the domestic courts was guaranteed by article 190 of the Constitution. The only exceptions to their precedence over national legislation were the referendum laws and the Constitution itself, which, if found inconsistent with international treaties, must be amended and brought into line with the treaty in question. There were several cases in which the Covenant had been directly applied, including by the Supreme Court (application of arts. 3, 10 and 26 of the Covenant) and the Military Advocate's Department (application of art. 6 of the Covenant). Furthermore, the instruments ratified by Rwanda, including the Covenant, were referred to in the preambles to laws, including organic laws, and were considered by Parliament when adopting new legislation.

8. **Mr. Nsengimana** (Rwanda), referring to question 2 on the list of issues, said that unity and reconciliation were key to achieving stability and sustainable peace in Rwanda. To that end, the Government had adopted a number of measures, such as the inclusion of the concepts of unity and reconciliation in the Constitution; the creation of a National Unity and Reconciliation Commission; the establishment of specialized institutions to ensure respect for human rights, transparency and good governance; the setting up of Gacaca courts; the repatriation of refugees and ex-combatants and the formation of a single army; and transparent elections. In addition, a decision had been taken to exclude any reference to ethnic groups in public administrative documents and instead to emphasize the unifying nature of Rwandan nationality. Finally, poverty reduction mechanisms were an important factor in achieving national unity.

9. Given that the Covenant was directly applicable in Rwanda, the National Unity and Reconciliation Commission could not contradict its provisions. All the rights recognized in the Covenant were thus taken into account in the activities of the Commission, which aimed at reintegrating individuals who had been involved in the genocide, following their trial by the Gacaca courts.

10. Turning to question 3 on the list of issues, he said that the Government of Rwanda had welcomed the establishment, belated though it had been, of the International Criminal Tribunal for Rwanda. It had cooperated fully with the Tribunal with regard to investigations, witness protection, the search for fugitives, capacity-building of judicial staff and traineeships for university students and civil servants. In addition, Rwanda was helping the Tribunal identify needs and potential solutions for the transfer of cases and prisoners in the event that the Tribunal did not complete its work by the end of 2010.

11. **Mr. Rusanganwa** (Rwanda), replying to question 4 on the list of issues, said that the revolt in the Mulindi military detention centre had occurred because measures introduced to combat drug trafficking had been unpopular with the prisoners. The military police had intervened to restore order, killing three prisoners in self-defence and injuring several others. Following an investigation, disciplinary measures had been imposed on the members of the military police who had shot the prisoners and the director of the detention centre had resigned. While the case had now been closed, victims and members of their families were still entitled to seek civil damages through the courts.

12. **Mr. Nsengimana** (Rwanda) noted that the National Human Rights Commission had followed the case closely, and recommended that in future tear gas or rubber bullets should be used in such incidents rather than live ammunition.

13. **Mr. Rusanganwa** (Rwanda), responding to question 5, said that solitary confinement for life was imposed solely on dangerous persons who had committed inhuman crimes which required them to be isolated for the safety of the other prisoners. The imposition of such a sentence was not incompatible with article 7 of the Covenant, since the prisoners in question were guaranteed all of the rights enjoyed by other prisoners under the Constitution.

14. Furthermore, article 5 of the Rwandan draft law on execution of the sentence of life imprisonment stipulated that any persons sentenced to life imprisonment must be afforded decent treatment which ensured respect for their human rights. It also protected such persons against any form of cruelty, torture and inhuman or degrading treatment. Thus, under the draft law, the only difference between prisoners sentenced to solitary confinement for life and all other prisoners was that, in order to maintain prison security and good order, the former were denied regular contact with the latter.

15. Referring to question 6, he said that any police officer or member of the Local Defence Forces who used excessive and illegal force when arresting suspects would be prosecuted to the full extent of the law. For example, article 42 of Act No. 09/2000 stated that the police force should endeavour to carry out its work without the use of firearms and that other equipment, such as truncheons, tear gas and rubber bullets, should be used instead. Any police officer who failed to comply would be liable to prosecution. Furthermore, article 27 of Act No. 02/2004 stated that members of the Local Defence Forces would be held accountable by law for any acts committed during the performance of their duties that did not fall within their competence, while article 79 of Decree No. 155/01 provided for criminal and disciplinary proceedings against members of the national police who abused their authority.

16. In response to question 7, he noted that the Constitution of Rwanda protected the liberty and security of the person from potential violations. Article 18 of the Constitution stated that liberty of the person was guaranteed by the State and that no one could be prosecuted, arrested, detained or convicted except under the conditions specified by the law in force at the time that the act was committed. In that connection, Act No. 13/2004, as amended and supplemented by Act No. 20/2006, had restricted the length of time during which a person could be held by the police or Prosecution Service for the purposes of an investigation. In the case of police custody, an arrest report written by a police officer was valid for only 72 hours from the issuance of the arrest warrant, while a warrant issued by the Prosecution Service was valid for only seven days. The law was strictly observed in that respect and judges were now authorized to release detainees upon the expiry of a given deadline.

17. In addition to such legislative measures, administrative measures had been taken to prevent arbitrary and illegal detention, including the closure of non-official detention centres and stricter inspections of police stations.

18. **Ms. Tumukunde** (Rwanda) said that while the 2007 report of the National Human Rights Commission had documented a few cases of excessive detention in police custody or following acquittal, such cases were not in fact arbitrary detention. Nevertheless, measures had been put in place to ensure that there were no further such cases of excessive detention, including regular inspections of prisoners' files by prison directors and by the Office of the State Prosecutor-General, as well as the immediate dispatch of court judgements to the relevant authorities.

19. **Mr. Nsengimana** (Rwanda), replying to question 8, said that reports of the number of arrests on charges of vagrancy were often exaggerated. However, it should be recalled that vagrancy and begging were offences punishable by articles 284, 285 and 286 of the Criminal Code of Rwanda.

20. The Kigali authorities were working in conjunction with the national police to arrest vagrants and beggars for reasons of security. The prosecution of offenders followed judicial procedures, while minor offenders were either returned to their family homes or sent to rehabilitation centres. In that connection, he noted that a national policy for orphans and other vulnerable children had been in place since 2003. Under that policy, the Government had adopted a strategic plan for street children which established various mechanisms for their social integration. Furthermore, since vagrancy and begging were often caused by poverty, the Government had adopted several economic support measures, such as the project on highly labour-intensive work mentioned in the report. Gainful employment was the best solution to the problem of vagrancy and begging.

21. **Mr. Rusanganwa** (Rwanda), responding to question 9, said that, in the wake of the 1994 genocide in Rwanda, some 120,000 persons had been detained pending examination of their cases by the competent courts. In order to avoid a situation whereby those persons risked being in detention for longer than any custodial sentence that might be imposed upon conviction, on 1 January 2003 the Office of the President of the Republic had issued a communiqué asking for the provisional release, subject to the laws in force, of detainees who had confessed to participating in the genocide and who risked finding themselves in such a situation. That appeal had been made every year since 2003, with the result that a total of more than 59,000 detainees had been released to date.

22. The Gacaca courts had been established to speed up genocide trials in compensation for the slowness of the regular court system due to the limited number of courts and the difficulties of gathering evidence. The third amendment to Organic Law No. 16/2004 had increased the scope and number of Gacaca courts, while the introduction of community service into the Gacaca process, pursuant to Presidential Order No. 17/03/2003, had helped to further ease overcrowding in prisons, thereby facilitating a successful conclusion to the reconciliation process.

23. **Mr. Nsengimana** (Rwanda) said that the situation in Rwanda was very particular, given that a large proportion of the population had been directly involved in the genocide. The Gacaca courts had been set up not only to expedite the process of judging but also with a view to reconciliation, but that did not mean impunity for offenders. Those courts had allowed a million people to be tried in four years, thereby lowering the number of people in prison and increasing the number of those able to contribute, through productive activity, to the national economy.

24. Responding to question 10 on the list of issues, he stressed that none of the basic rights provided for in article 137 (7) of the Constitution were affected by a state of siege or emergency; all other rights could indeed be curtailed in such a situation, but only within limits laid down by law. In a state of emergency, all rights to be suspended must be stipulated, and even then individuals could avail themselves of effective remedies. On the issue of discrimination against women (question 11), he said that a number of legislative provisions that did so discriminate were being reviewed with a view to their abrogation.

25. **Ms. Tumukunde** (Rwanda) said that the National Human Rights Commission was part of the review team, which was headed by the Ministry of Gender and Family Promotion. Much had already been achieved in that area during the Commission's 10 years of work, particularly in the civil and political spheres, where women currently enjoyed almost equal rights with

men. A few aspects of the Family Code and the Criminal Code were currently being reviewed, particularly to ensure that men and women were treated equally in cases of adultery; by the end of the review process, all the necessary conditions for full gender equality should be in place.

26 Turning to question 12, she said that the Ministry of Gender and Family Promotion and the Human Rights Commission were constitutional entities and, as such, received a part of the Government's budget. However, owing to the state of the country's finances, that still left a shortfall; additional funding was provided by relevant international and bilateral organizations. As for criteria for election to the National Women's Council, they were open, ensuring representation from grass roots up to national level. The Council had been successful in all aspects of its work, particularly in advancing women's economic and social rights.

27. **Mr. Rusanganwa** (Rwanda), taking up question 13, said that rape was a punishable offence under the Criminal Code, an amended version of which was currently before Parliament, as was a special law against trafficking in human beings, particularly children. In addition, a new law had been adopted to punish gender-based violence. Under those new provisions, the severity of the punishment handed down depended on several factors, and could be doubled in some circumstances. Rape of a minor, for instance, was punishable by between 10 years' imprisonment and life imprisonment, in place of the death penalty, which had been abolished. Rape cases were given priority in terms of investigations, medical treatment and judicial hearings. At national level and in each police station, special units had been established to respond with maximum efficiency and care to all reported cases of rape, and in particular to address and counteract the risks of HIV/AIDS.

28. **Mr. Nsengimana** (Rwanda), referring to question 14, said that sexual violence was one of the practices that had been rife during the genocide. The Government had accordingly taken special measures to provide victims with a prompt police response and access to medical treatment and judicial services, with the support of the United Nations Development Fund for Women. The strategy had been very successful, particularly in deterring potential perpetrators of such violence. Victims also benefited from NGO counselling services. Moreover, a special unit had been set up at national level to develop and implement programmes and policies to protect and assist victims and witnesses and to plan, carry out and monitor all the related activities.

29. **Ms. Wedgwood**, expressing appreciation that Rwanda had, after so many years, submitted a report, stressed that frequent reporting was a means whereby the Committee and each State party could together improve compliance with the provisions of the Covenant, whose purpose was to inspire action on the ground. Rwanda had been subject to the most awful horrors but now must strive to put the trauma behind it and build the future. It was therefore not enough to enact legislation; concrete measures must be taken, and they must be reported on. The Committee needed empirical information; it wished to know what was being done in practice, not just at the formal level. The reference made, in the response to question 1 in the list of issues, to article 190 of the Constitution did not advance the matter, in the absence of procedural safeguards in the Gacaca courts, guaranteed legal representation or fact-finding activities. Without effective freedom of expression, article 19 of the Covenant remained a dead letter, while article 7 was meaningless if prison conditions were bad. The Committee would appreciate information about reported cases of large numbers of children detained in a warehouse, of women becoming pregnant while in prison and of prisoners held for long periods of time in solitary confinement without the possibility of a single visit. She regretted that the delegation did not include persons with direct responsibility for operations on the ground.

30. With regard to question 3 on the list of issues, information reaching the Committee suggested that there were problems that affected the independence of the International Criminal Tribunal for Rwanda. For instance, pursuant to the Tribunal's termination strategy and at the urging of the Government, a growing number of cases before the Tribunal were being transferred to national courts in Rwanda. She requested further information on efforts to ensure that such transferred defendants benefited from the same procedural protections they would have had in the Tribunal. In addition, information had reached the Committee that tens of thousands of alleged collaborators had been killed by security services in various regions of the country and that there had been

few, if any, investigations or prosecutions in such alleged cases of excessive force.

31. Turning to questions 4 and 6, she noted that there had been reports of extrajudicial, summary and arbitrary executions by security services, problems that the Government was duty bound to investigate. Information had reached the Committee that certain persons, such as Leonard Hitimana, a former Member of Parliament for the MDR party, Lieutenant Colonel Augustin Cyiza, a former Vice-President of the Supreme Court, Jean-Marie Vianney, a shopkeeper, and Damien Musayidizi, a former Secretary of the Ministry of Defence, had disappeared, without any evidence of investigation on the part of the Government. Such incidents must be investigated in the context of the Covenant obligation relating to the right to life and the prohibition of extrajudicial executions. She requested more information on Government efforts to deal with such cases and other disappearances.

32. With regard to questions 7, 8 and 9, she asked for more information concerning the protection of Covenant rights in cases of detention, in particular lengthy pre-trial detentions and the warehousing of street children and migrants, practices that exposed unconvicted persons to extreme conditions, including the mixing in prisons of convicted and unconvicted persons.

33. Finally, turning to question 10, she urged the Government to review carefully the Committee's general comment No. 29 on article 4, in particular paragraphs 13 to 16, which dealt with rights, even beyond those specified in the Covenant, during a state of siege. She noted that the Committee had heard that there had been changes in the Gacaca courts that even further weakened the protection of Covenant rights. In that connection she urged the State party to review general comment No. 32 on article 24, especially paragraph 24 on customary law courts.

34. **Mr. Amor** welcomed the report, but noted that it was rather formal and offered a relatively limited number of facts, in particular information on the State party's practice in implementing the Covenant. While commending the State party for having established the National Unity and Reconciliation Commission, he requested more information on the participation of non-Government entities, i.e. civil society, in that body. It was not clear from the report, in particular paragraph 6, what exactly the Government meant by "civil society" and the degree to which it was formally involved in the enormous recovery process. He noted also that the Gacaca courts posed certain problems, for all their usefulness in reducing the backlog of cases, as they had allegedly been used on occasion to settle local accounts on the basis of rather slender evidence. There had also been reports of the use of excessive force by security services, sometimes resulting in detainees being shot for simply resisting arrest. He asked whether there had been any investigations or prosecutions in such cases.

35. Addressing specifically question 8 on the list of issues, he requested more information on who exactly were considered vagrants. Noting that many people in marginal and vulnerable groups were apparently detained beyond the reach of non-governmental organizations and legal counsel, he reminded the State party that criminalizing vagrancy, begging and prostitution led to treatments that violated the Covenant. Such lifestyles were the result of poverty, which was not a crime. He requested more information on the numbers of such vulnerable people and the treatment they received.

36. **Ms. Majodina** expressed some surprise that the National Human Rights Commission had not submitted an independent report on the Government's compliance with its Covenant obligations but had instead joined the Government delegation. With regard to question 5 on the list of issues, she noted that the Constitution and other legislation prohibited torture but allowed life imprisonment in solitary confinement. The Committee had, in its general comment No. 20 on article 7, ruled that prolonged solitary confinement was excessively cruel and violated article 7 of the Covenant. It was furthermore not clear from the report or the responses what the criteria were for imposing life imprisonment in solitary confinement in certain cases of genocide.

37. Turning to question 11, she welcomed the high participation of women in Parliament but asked for more information on the review to be conducted by the National Human Rights Commission into laws disadvantaging women, in particular articles 206, 213 and 354 of the Family Code, which discriminated against women in the family, at work and in court.

38. Finally, she requested more information on the issues raised in question 11, in particular whether the Government provided adequate budgetary support for efforts to integrate gender equity and gender

mainstreaming in a sustainable manner. She asked specifically about gender focal points and the institutional framework for gender mainstreaming.

The meeting rose at 1 p.m.

United Nations CCPR/C/SR.2603

International Covenant on Civil and Political Rights

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Human Rights Committee

Ninety-fifth session

Summary record (partial)* of the 2603rd meeting

Held at Headquarters, New York, on Wednesday, 18 March 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Rwanda (*continued*)

* No summary record was prepared for the rest of the meeting.

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09-27173 (E)

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Rwanda (*continued*) (CCPR/C/RWA/3; CCPR/C/RWA/Q/3/Rev.1 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Rwanda took places at the Committee table.*

2. **The Chairperson** invited the Committee to continue with its queries on questions 1 to 14 of the list of issues (CCPR/C/RWA/Q/3/Rev.1).

3. **Ms. Motoc** said that the Committee had received information concerning the existence of arbitrary detention centres in Rwanda. She asked whether the Government was aware of any such centres and, if so, how it was dealing with them.

4. She commended Rwanda for the progress it had made in protecting women's rights. Greater attention was being paid to the issue of rape and measures had been introduced to address it. That said, more statistics would be welcome. She was particularly curious to know about efforts to punish persons found guilty of rape and to reintegrate rape victims into society. Lastly, she wished to know how the Government was addressing domestic violence.

5. **Sir Nigel Rodley** said that, given the traumatic events of the 1990s, Rwanda's decision to abolish the death penalty was remarkable. While the Covenant did not require the abolition of the death penalty, the Committee had always considered the Covenant to be an essentially abolitionist document. Rwanda's decision set a fine example to the subregion, region and world at large.

6. While he understood Rwanda's decision to replace the death penalty with life imprisonment, he had some concerns about the sentence of solitary confinement for life and, in particular, the practice of preventing persons given such a sentence from receiving visitors. In that connection, he was pleased to note that the draft law on execution of the sentence of life imprisonment would allow visits. He wished to know when the draft law would be approved and under what conditions visits would take place.

7. According to the response to question 4, the members of the military police responsible for killing prisoners at the Mulindi military detention centre in December 2005 had been acting in self-defence. However, also according to that response, disciplinary action had been taken against the members of the military police concerned and the prison Director had been fired. It was difficult for him to reconcile the two statements. If disciplinary action had been taken because the individuals concerned had used unnecessary force, the argument of self-defence surely no longer applied.

8. Lastly, the response to question 6 stated that security officers might use force only to pursue a legitimate objective. The reporting State should explain how it determined which objectives were legitimate and which were not. Traditionally, the Committee interpreted article 6 in light of the use of firearms by law enforcement officials. The general principle followed was that the force used must not exceed the force being prevented. In other words, lethal force should be used only to prevent lethal force.

9. **Mr. Pérez Sánchez-Cerro**, noting that the National Human Rights Commission was responsible, inter alia, for examining human rights violations committed in Rwanda by State entities, persons professing to represent the State, organizations and individuals (para. 93 of Rwanda's third periodic report (CCPR/C/RWA/3)), requested more information about the Commission's investigation procedure. He was particularly interested in knowing to which body the Commission reported and whether or not it was effective and independent.

10. The Committee had learned that a certain General was recruiting children from Rwanda's refugee camps. Kidnapping might be a more appropriate term, since the children usually disappeared at night without their parents' knowledge. He asked whether the Government planned to investigate the issue and punish those responsible.

11. Lastly, the reporting State should explain how the Government planned to strengthen the Gacaca courts and prevent violations of due process.

12. **Mr. Fathalla** asked why international treaties and conventions which had been duly ratified or approved took precedence over all organic laws and ordinary laws except for the Constitution and referendum laws (report, para. 4). He was curious to know whether the

Government had adopted any comprehensive environmental protection measures that would help protect citizens' right to life.

13. **Mr. Salvioli**, referring to the reporting State's comment that the Covenant was not often invoked by petitioners and therefore not often applied by the judiciary, asked whether Rwanda had introduced any judicial training programmes, particularly on the implementation of the Covenant.

14. Referring to the comments made by Sir Nigel Rodley, he asked whether military courts were competent to try common crimes.

15. It had been suggested that women who were raped in prison were raped by other prisoners. Yet paragraph 222 of the report stated that women in detention facilities lived in special blocks that were segregated from the men's quarters and guarded by female warders. He asked whether that was true and requested precise statistics on the number of persons found guilty of rape and sentenced.

16. Lastly, he expressed concern about article 191 of the new draft criminal code, which seemed to criminalize homosexuality, and asked whether the reporting State considered it to be compatible with the Covenant.

17. **Mr. Rivas Posada**, referring to the second part of question 10, said it was still unclear whether or not individuals could avail themselves of effective remedies during a state of siege or emergency. In most countries there were official channels for reviewing a decision to declare a state of siege or emergency should individuals, groups or institutions consider that decision to be illegal or unconstitutional. The reporting State should clarify whether or not that was the case in Rwanda.

18. **Mr. Bouzid**, also referring to question 10, asked whether Rwandan citizens needed both a passport and a laissez-passer to travel abroad (report, para. 212) and, if so, whether that was the case all the time or only during a state of emergency.

19. **Mr. Nsengimana** (Rwanda) conveyed the delegation's apologies for not having provided an English translation of its responses to the list of issues. It would have been happy to do so, but had understood that the Secretariat would be responsible for the translation, as had been the case for the report.

20. With regard to Ms. Wedgwood's concern about the limited size of the delegation of Rwanda in comparison to those of other countries, he said that unfortunately some intended members of the delegation, for example a police officer, had been unable to obtain visas in time to attend.

21. With regard to the question on how the Covenant was being translated into national law and into practice, he said that in Rwanda's monist approach, the Covenant and other international instruments were implemented automatically. However, before any changes could be made to the Constitution, the people needed to be consulted. Therefore, if an international instrument conflicted with the Constitution, time had to be taken to bring the matter to Parliament or, if necessary, to call a referendum. That did not mean that the Constitution could not be changed, just that there was a procedure to follow and it was not automatic. With regard to practice, as in any country, when a law was passed, efforts needed to be made to raise awareness both among the general public and for judges. While there was no lack of willingness, any change in the law took time to come fully into effect.

22. The lack of statistical data was a problem which stemmed from the difficulties of reconstruction of the country's infrastructure. Rwanda did have an institute of statistics, but it was still new. Rwanda would be able to include more statistical data when it submitted its next report to the Committee.

23. Turning to the question of the Gacaca system of justice, he recalled the principle that justice delayed was justice denied. The regular system of justice in Rwanda had found it impossible to cope with such a large volume of cases — more than one million — so that many people had spent a considerable time in prison awaiting trial. The Gacaca system had been set up in response to that situation, inspired by traditional forms of justice and reconciliation but also using modern court practices, forming a new hybrid system. That system responded to the unique nature of the crimes committed in Rwanda, which necessitated reconciliation as well as justice. In the Gacaca system the people themselves came together to determine responsibility for the crimes committed and hand down punishments, but it also provided a voice of reconciliation. The system also had assistance from trained legal advisers who visited the courts to give advice where needed, particularly for problematic cases. That legal support was not necessarily provided

to individuals, but instead to the court as a whole, to assist in its decision-making. Of course it was not a perfect system, but even the regular court system was not perfect and the international community had found no other way of resolving the problem. The Gacaca system had worked -- Rwanda was now probably the most peaceful and safe country in the region.

24. Regarding freedom of expression, he said that the media, in particular Radio Mille Collines, had played a reprehensible part both before and during the genocide, heightening divisions and inciting violence, even providing specific details on where to find people so that they could be killed. Journalists accused of those offences had the right to legal counsel and their cases had generally gone smoothly. Journalists were rarely imprisoned, since the cases against them were largely for civil offences. Today the press in Rwanda was free, and some newspapers were highly critical of the Government.

25. With regard to the matter of detention, the warehouse that had been referred to was not in fact a detention centre or prison, but rather a transit centre where young people were rapidly sorted and returned to their families or sent to education centres. The adults, classed as vagrants, were in most cases repeat offenders and drug dealers; they were prosecuted for their offences.

26. With regard to the question about women becoming pregnant in prison, he stressed that prisons were divided into two gender-segregated zones. Rape was therefore not possible in prison. However, in some cases women had been granted provisional release — as a result of the President's communiqué — and had later returned to prison, pregnant. They had not however become pregnant in prison.

27. Turning to the issue of prison conditions, particularly with regard to life imprisonment, he said that Rwanda's draft law on execution of the sentence of life imprisonment had been approved by the Council of Ministers and would be sent to Parliament. In Rwanda, there were two kinds of life imprisonment. Under the first category, prisoners became eligible for conditional release or presidential pardon after 10 years, with good behaviour. In the second category, prisoners only became eligible after 20 years. In addition, where prisoners of the first type could receive visitors once a week, the second type could receive them only once every two weeks. Those prisoners were not held in solitary confinement, they were simply given their own cells — like prisoners in the West — whereas the rest of the prison population slept in dormitories, as was standard in many developing countries. In general terms, prison conditions were constantly improving, in line with improvements in the economic conditions of Rwanda.

28. Where the International Criminal Tribunal for Rwanda was concerned, Rwanda was cooperating with the Tribunal and would continue to do so. That did not mean however that it would blindly submit to the Tribunal's requests; some dialogue was necessary. There had been cases where witnesses from Rwanda appearing before the Tribunal had been mistreated during cross-examination. Rwanda had protested and the problems had since been resolved. Another issue was that the Tribunal had to complete its work. Security Council resolution 1503 (2003) provided the conditions for completion but the Tribunal seemed unwilling to comply so Rwanda had again spoken up. There needed to be a mechanism to monitor the implementation of the resolution without the constant need to bring the matter before the Security Council.

29. With regard to the matter of different methods of justice, the situations in Rwanda could not be compared to that of the former Yugoslavia. In Rwanda, though there were killings on both sides, one side had been attempting to stop the genocide being perpetrated by the other side. In cases where people were killed in order to stop them committing genocide, that itself was not organized killing and any accusations of war crimes in those cases were incorrect. With regard to cases of war crimes that had been transferred from the International Criminal Tribunal to the Rwandan courts, the Prosecutor had agreed that one case in which two young soldiers had shot priests and bishops, which had been identified as a war crime, could be tried in Rwanda. The two perpetrators — now a captain and a major — had confessed and been convicted. That was a demonstration of the fact that those on the side of stopping the genocide had convicted their own forces.

30. Turning to the issue of extrajudicial killings and disappearances, he said that in the Mulindi case, even though the killings were deemed to have been in self-defence and the case had been closed, disciplinary measures had been taken because the prison authorities could have dealt with the situation earlier, before it got out of hand. As for disappearances, investigations had

been carried out in all cases and when offenders had been found they had been prosecuted.

31. With regard to Mr. Amor's concern about the composition of the National Unity and Reconciliation Commission, he said that in fact there was a broad range of participation, including from civil society. For example, the Vice-Chairman of the Commission was a church minister — churches were part of civil society in Rwanda. Another, recently deceased, member of the Commission had been a priest and head teacher.

32. With regard to the question about the limitations of reconciliation, he said that even with the progress made by the National Unity and Reconciliation Commission and the Gacaca courts, reconciliation was a long process and achieving national harmony after what had happened in Rwanda was not easy. Progress had been made but there was still some way to go before the process could be considered complete. Poverty was also a factor in the recovery, so continued poverty reduction efforts were essential. Survivors of the genocide and young people who had been involved in the genocide were now working together on microfinance projects.

33. **Ms. Tumukunde** (Rwanda) said that the National Human Rights Commission played a major role in all phases of treaty body report preparation. In the early phases, the Commission engaged in education and advocacy about reporting and held trainings on the human rights covenants. The Commission had been instrumental in calling for an inter-ministerial team as a permanent mechanism and provided technical advice during report preparation. It also provided a forum for stakeholders to make inputs to the report and reminded the various ministries involved regarding timely preparation. The Commission was involved in the translation of the concluding remarks into the local language and their implementation. When necessary, the Commission prepared a "shadow report", although, for the current meeting, there had been no reason to do so.

34. In regard to gender equality, a legal review of the Penal Code and the Family Code was under way, and that topic would be taken up in the next report. All Government institutions had gender focal points who monitored gender mainstreaming and gender budgeting. Those issues were not the sole responsibility of the Ministry of Gender and Family Promotion. The Ministry of Finance had recently met with gender promotion stakeholders and representatives of the United Nations Development Fund for Women and other organizations to discuss gender mainstreaming and gender budgeting as they pertained to the national budget. There was also a gender observatory charged with monitoring adherence to gender equality in institutions and the budget.

35. **Mr. Nsengimana** (Rwanda) said that in Rwanda international treaties came after the national Constitution in the legal hierarchy, followed by domestic law. In cases where an international treaty and the Constitution were in contradiction, the issue was brought to the Parliament and, if appropriate, the Constitution could be amended.

36. Military courts had sole jurisdiction over military people. However, if a military person and a civilian colluded in the commission of an offence, the civilian would be tried in military court, so as not to break up the case.

37. Rwanda had a law on the environment and an environmental protection agency. It had ratified several international instruments on the environment and engaged in regional environmental cooperation through the East African Community and the Nile Basin Initiative. Rwanda had abolished the use of plastic bags, and people entering the country were required to leave them at the airport.

38. The Foreign Ministry was planning a project to promote respect for treaty obligations, which included training in international law to be conducted in conjunction with treaty implementation. The training would encourage legal professionals to enforce international treaties.

39. Rwanda issued both passports and laissez-passer documents. The latter were for use in emergencies and for travel to neighbouring countries. They cost less than passports and were easier to obtain. All citizens had the right to receive a passport.

40. Training sessions were regularly held for judges, police, prosecutors, court officials and other justice and law enforcement professionals. Military service people received human rights training, as did peacekeepers before departing on mission. After the translation of the Covenant into Kinyarwandan, relevant training had been organized.

41. **Ms. Tumukunde** (Rwanda) said that according to the Constitution of 2003, the National Human Rights

Commission was charged with the protection and promotion of human rights and also examined violations and educated people on human rights issues. It reported to the Parliament, managed its own budget and handled planning and staff recruitment independently.

42. Commission representatives had the right to visit prisons unannounced if violations were suspected, to request any document or summon any individual who might aid in its work and to speak with relevant institutions to resolve issues amicably, if possible.

43. **Mr. Nsengimana** (Rwanda) said that on the subject of recruitment of child soldiers, the expert report was incomplete and less than impartial. It failed to note cases of which the Committee had been notified in which children on their way to join the Rwandan Army had been prevented from joining, and it failed to mention cases of recruiters who had been arrested and would stand trial. Other important information had been buried in the annexes to the report where readers might not find it.

44. Before declaring a state of emergency, the President consulted with the Parliament. There were avenues for Parliament to act if it was not in agreement with the imposition of a state of emergency.

45. **Mr. Rusanganwa** (Rwanda) said that homosexuality was a crime under the current Criminal Code. There was a national consensus that homosexuality should remain a criminal offence in the new draft criminal code currently before the Parliament, although it was possible that the Parliament might change that in the future.

46. Non-sexual forms of violence such as domestic violence, murder, etc. were sanctioned under the law.

47. **Ms. Wedgwood** said that she had not asked why people were being held in the warehouse detention centre. Rather, she had noted that if children were held there, then conditions must be decent and procedures well-administered.

48. Given the many thousands of people who had been awaiting trial in prison in 1994 and the dangers of overcrowding at that time, the use of the Gacaca courts had been understandable. However, if Gacaca courts were used in cases where severe penalties were imposed, a consistent process must be applied. It was unfair, for example, to hold a trial in which one side had a lawyer and the other did not. There had been a report of a Gacaca trial in which a judge, accused of rape, had presided over the trial of his accuser. That was not right. The very real problems faced in 1994 did not explain irregular procedure 15 years later.

49. While it appeared that a new statute would resolve the issue of solitary confinement, that issue still remained somewhat unclear. A written response on the matter would be helpful.

50. While it was generally agreed that Radio Mille Collines had acted in support of the genocide during the massacres and should have been shut down at the time, incitement to massacre should not be conflated with ordinary political dissidence, and such past events should not be used as an argument to silence dissent.

51. She requested a written response in regard to particular cases of possible war crimes against the four people she had referred to earlier: Lieutenant-Colonel Augustin Cyiza, former vice-president of the Supreme Court, former Member of Parliament Leonard Hitimana, Damien Musayidizy and Jean-Marie Vianney. It would be good for the Rwandan Government itself if those cases were resolved thoroughly and transparently.

52. Allegations concerning violations by the military must be taken seriously. Rwanda should conduct a transparent investigation of the allegations raised by the Spanish magistrate regarding the murders of Spanish civilians by members of the Rwandan Patriotic Front and those of the United States Department of State in regard to civilian deaths in the north-western part of the country four years after the genocide. Not every killing in time of war could be justified on the grounds of self-defence. The case of General Karenzi, involving the alleged deaths of civilians between 1994 and 1998, should also be investigated.

53. **Sir Nigel Rodley** asked for further clarification as to why disciplinary sanctions had been imposed on prison staff in the case of the Mulindi Prison strike when it had been determined the officials had acted in self-defence during the uprising.

54. **Ms. Majodina** observed that it was very important for the National Human Rights Commission to guard its political as well as financial independence and not succumb to any pressure from the Government to perform what were properly executive or parliamentary functions. Also, she would like to know if the solitary confinement legislation under consideration would maintain a double standard by

prohibiting the solitary confinement of genocide suspects transferred from the International Criminal Tribunal and found guilty by Rwandan courts, while allowing that sanction to be applied to other prisoners.

55. **Mr. Amor** noted that the Government had taken action against certain journalists whom it deemed had gone beyond the bounds of freedom of the press to become spokesmen for divisionism and hatred, which in fact governments were authorized to do under article 20, paragraph 2, of the Covenant. He nevertheless cautioned that it must be scrupulous in not overstepping its bounds in characterizing the simple use of free speech as incitement. Also, he failed to see why persons should be arrested for begging, even temporarily, and would like to know the legal definition of "vagrancy".

56. **Mr. Nsengimana** (Rwanda) said that the warehouse in which juvenile suspects were being held, as they had been held during the 1994 events, was not a prison but a triage centre near Kigali, from which the minors were either released to their families, sent for re-education or charged with vagrancy. The Government was in the process of building a new detention centre, at which point juvenile suspects would be held in prison until the triage could be completed, making their situation actually worse.

57. The offence of "vagrancy" comprised pickpocketing and drug dealing. Those accused of it included street people and prostitutes who either robbed people or sold drugs. First offenders were released, but repeat offenders were charged and tried.

58. **Mr. Rusanganwa** (Rwanda) observed that since the Criminal Code defined vagrancy as a habitual offence, recidivism was a prerequisite for conviction.

59. **Mr. Nsengimana** (Rwanda) said that the Government had had the choice of leaving suspects in prison for lengthy periods until they could be brought to trial, or resorting to the Gacaca system, with its shortcomings. It should be noted, however, that there was a national bureau of legal advisers who studied the problem cases that Gacaca justice could not handle and who regularly went into the field to observe how the system was working.

60. Those who had been arrested as political opponents were just that, and not journalists: there was no question of the Government having used the past behaviour of Radio Mille Collines as an excuse to harass journalists, who as far as he knew were not in opposition to the Government. All the cases of disappearances cited by Ms. Wedgwood would be investigated and there would be a reply in writing.

61. His Government had cooperated with the Arusha Tribunal, and there had been several cases of military officers judged by both the Tribunal and the Rwandan courts. The Karenzi case had been complicated because the charge of alleged crimes had been brought by a Spanish and a French judge, acting — improperly, in Rwanda's view — on the principle of universal jurisdiction. They had charged Karenzi only when he had been named as Deputy Force Commander of the African Union-United Nations Hybrid Operation in Darfur (UNAMID). Rwanda had officially objected; and at its eleventh summit in 2008, the African Union, having taken the decision that the principle of universal jurisdiction should not be invoked in the case of Africa, had entered into discussions with both the European Union and the United Nations to find an appropriate solution for the application of that principle.

62. In the instance queried by Sir Nigel, prison officials had indeed acted in self-defence during the inmate uprising, but the Government had imposed disciplinary sanctions on the prison director because the violence could have been avoided if he had taken his responsibilities more seriously during the events leading up to it.

63. He agreed that there was always a risk that human rights commissions would not be independent when they were funded by their governments or used by them. Rwanda's National Human Rights Commission was carefully maintaining its independence, and intentionally made its reports to the Parliament rather than the Executive as a further safeguard.

64. The issue of solitary confinement had come up in connection with prisoners transferred to Rwandan jails by the Arusha Tribunal, which forbade it. The Government had subsequently decided, in the new legislation under consideration, to have the prohibition against solitary confinement apply to all prisoners.

65. Lastly, beggars were never arrested for begging but only when they were acting as pickpockets or muggers.

66. *The members of the delegation of Rwanda withdrew.*

The discussion covered in the summary record ended at 5.35 p.m.